IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO. 179 OF 2006**
**IN**
**SUIT NO. 98 OF 2006**

Rashid P. Irani .. Plaintiff.

V/s.

1. Jerbanoo T. Irani & Ors. .. Defendants.

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Mr. S.Malik with Mr. Prem Sood for the Plaintiff.

Mr. Suraj Shah for the Defendants Nos. 1, 2 and 3.

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**CORAM : S. A. BOBDE, J.**

**DATED : 05th FEBRUARY, 2007.**

**P.C.:**

. The suit is filed by the plaintiff for a declaration that the defendant No.2, Hormazd T. Irani has wrongfully usurped the partnership business of M/s. Khadadad Sheriar & Co. and the business being carried on in the suit shop No. 553 in M.J.Phule Market, which is liable to be wound up.

2. In this suit, the plaintiff has taken out the present notice of motion for an appointment of court receiver in respect of the suit shop, business assets and stock in trade with direction to sell the stock in

trade and assets. The plaintiff's case, in brief, is that the defendant No.2 was inducted by him as partner in the partnership business, which was admittedly not registered. The plaintiff claims that the defendant No.2 is a camel, who was let in the tent and is now ousting the occupant -Arab.

3. Apparently, the same reliefs were sought by the plaintiff by way of Notice of Motion No. 1667 of 2004, taken out in suit No. 756 of 2004, filed by the defendant No.6 in respect of the same partnership. Admittedly, this notice of motion was dismissed on 15.04.2006 with a direction that the plaintiff may file his own suit. After April, 2005 when that motion was dismissed, the plaintiff filed the suit in November, 2005 and thus has taken out the present motion. Admittedly, the partnership firm is said to have been dissolved w.e.f. 31.04.2004. The plaintiff has not approached this court with sufficient diligence in time. Moreover, I find from the affidavit in support of the notice of motion that the plaintiff has given no details whatsoever about what the business assets of the firm are or the stock in trade. Moreover, the plaintiff has not stated what is the nature of the business assets and the stock in trade and where they are located.

4. Having regard to the circumstances of the case, it is not possible to ascertain the rights and liabilities and the status of the partnership in the business. In the absence of the any partnership deed and in the absence of any details about the stock in trade, I find that there is no merit in this notice of motion, which is liable to be dismissed.

5. Order accordingly.

(S.A.BOBDE,J.)

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